Supreme Court, U.S.
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No. 04-

IN THE
Supreme Court of the United States

KIMBERLYE FINCH,

Petitioner,

v.

EDDIE LEE GALAWAY, ADMINISTRATOR, ON BEHALF OF ESTATE OF BRADFORD WAYNE GALAWAY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974 ("ERISA") dictates that ERISA plan administrators must administer plans "in accordance with the documents and instruments governing the plan," which plans, according to ERISA itself, "shall be established and maintained pursuant to a written instrument" and "shall ... specify the basis on which payments are made to and from the plan." 29 U.S.C. § 1102(a)(1), 1102(b)(4), 1104(a)(1)(D). ERISA plan administrators must make payments to a "beneficiary" who is, according to the dictates of 29 U.S.C. § 1002(8), "designated by a participant, or by the terms of an employee benefit plan." In this case the ERISA participant was authorized by a divorce decree to change the designation of his ex-wife as beneficiary of his life insurance, but did not make any such change to the plan designation prior to his death.

The question presented is whether the identity of a beneficiary of an ERISA-governed plan is controlled by the plain language of ERISA, 29 U.S.C. § 1104(a)(1)(D), and its reliance on the four corners of the concomitant written plan documents so designating, as the Sixth Circuit and some other lower courts have held, or by evolving and developing federal common law, as the Fifth Circuit and some others have held.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the United States Court of Appeals for the Fifth Circuit were Kimberlye Finch and Eddie Lee Galaway, Administrator, on Behalf of Estate of Bradford Wayne Galaway. The Guardian Life Insurance Company of America, the plaintiff in interpleader in the United States District Court for the Northern District of Texas, appeared as *amicus curaie* in the Fifth Circuit proceedings.

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INTRODUCTION

An employee of a company had life insurance benefits under an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). He designated his wife as the beneficiary in the plan documents. ERISA, 29 U.S.C. § 1104(a)(1)(D), dictates that such a plan is to be administered according to the plan documents. The ERISA plan participant and his wife divorced, and the participant then died intestate some months later, without making any change to his beneficiary designation. His estate now seeks the plan benefits, arguing that, notwithstanding the plan designation, the ex-wife could no longer be treated as the named beneficiary. The argument arises ostensibly under federal common law that is said to override 29 U.S.C. § 1104's reliance on the plan documents themselves.

This Court recently held that a state statute that provided for the automatic revocation upon divorce of the designation of a spouse as the beneficiary of an ERISA-governed employee benefit plan is preempted by ERISA. *Egelhoff v. Egelhoff*, 532 U.S. 141, 147-51 (2001). This case presents an important question that analytically follows the decision that state law cannot determine who is the proper beneficiary of an ERISA plan: Where state law cannot determine the identity of the beneficiary following divorce, should the beneficiary designation in the plan's documents control as ERISA, 29 U.S.C. § 1104(a)(1)(D), provides, or should a developing federal common law rule of waiver—generally adopted from the same otherwise-preempted state law—govern. This case presents, in stark terms, this important and fundamental question of ERISA plan administration on which the circuits are deeply divided.

Like the preemption issue decided in *Egelhoff*, Petitioner would urge that the terms of ERISA provide the answer: 29 U.S.C. § 1104(a)(1)(D) dictates that ERISA plan administrators must administer plans "in accordance with the documents and instruments governing the plan," which

plans, according to 29 U.S.C. § 1102(a)(1) and 1102(b)(4), "shall be established and maintained pursuant to a written instrument" and "shall ... specify the basis on which payments are made to and from the plan." ERISA plan administrators must make payments to a "beneficiary" who is, according to the dictates of 29 U.S.C. § 1002(8), "designated by a participant, or by the terms of an employee benefit plan." *See Egelhoff*, 532 U.S. at 147.

A minority of the federal circuit and district courts addressing this issue have thus held that, when faced with the question of whether a designated beneficiary waived her interest in a plan's proceeds through a divorce decree, ERISA's clear statutory command, together with the plan's provisions, answer the question and dictate that the plan documents control, notwithstanding entreaties to state law or federal common law or equity. The Fifth Circuit in this case, however, reaffirmed its own allegiance to the view of the majority of circuits holding to the contrary. Instead, these circuits hold that it is appropriate to invoke federal common law—developed by looking for guidance to state law—to determine if the named beneficiary of an ERISA plan waived her rights.

In light of this division among the circuits, which continues unabated and does not appear likely to resolve itself, the Court should grant the Petition and resolve this issue that has long percolated in the courts of appeal and that undermines plan administrators' ability to rely upon the predictability, uniformity, certainty, and simplicity of plan administration that ERISA is supposed to provide. *See Estate of Zienowicz v. Metropolitan Life Ins. Co.*, 205 F. Supp. 2d 339 (D.N.J. 2002) (noting the conflicting views of the various circuits and the split in authority among the courts within the District of New Jersey); George A. Norwood, *Who is Entitled to Receive a Deceased Participant's ERISA Retirement Plan Benefits—an Ex-Spouse or Current Spouse? The Federal Circuits Have an Irreconcilable Conflict*, 33 GONZ. L. REV. 61 (1997-98)

(discussing the conflict among the circuits and between decisions of the Eight Circuit).

Indeed, this case is particularly appropriate for resolving the continuing controversy. As the Fifth Circuit's decision noted, there is no dispute in this case that the plan is governed by ERISA, that the case should be disposed of on summary judgment in the absence of any disputed facts, and that the only issue before the Court is the purely legal issue of whether courts can rely on federal common law to determine an ERISA plan's beneficiary. The Fifth Circuit acknowledged the circuit split on this issue, but held that the courts (and plan administrators) should rely on federal common law to determine if an ERISA plan's named beneficiary has effected a common-law waiver of her interest in the plan's proceeds. The question presented is therefore wholly dispositive of the case.

OPINIONS BELOW

The opinion of the Fifth Circuit is reported at 395 F.3d 238 and reprinted at App. 1a-10a. The district court's opinion is unreported but is available at 2004 U.S. Dist. LEXIS 979 (N.D. Tex. Jan. 15, 2004) and reprinted at App. 11a-17a.

JURISDICTION

The judgment of the Fifth Circuit was entered on December 22, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY PROVISIONS

Section 404(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1104(a)(1), provides in pertinent part:

> Subject to sections 403(c) and (d), 4042, and 4044 [29 U.S.C. §§ 1103(c) and (d), 1342, 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

ERISA Section 402, 29 U.S.C. § 1102, provides in pertinent part:

(a) Named fiduciaries.

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by

such an employer and such an employee organization acting jointly.

(b) Requisite features of plan. Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1) [29 U.S.C. § 1105(c)(1)]),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

STATEMENT OF THE CASE

The Guardian Life Insurance Company of America ("Guardian") filed this interpleader action in order to determine who should receive the proceeds of a life insurance plan governed by ERISA. App. 1a, 2a-3a, 12a.

Bradford Wayne Galaway ("Galaway") and Petitioner Kimberlye Finch ("Petitioner") were married on September 22, 2001. *Id.* 2a, 12a. On or about February 1, 2002, Guardian issued a group insurance policy to Galaway's employer, which provided Galaway with basic life insurance and accidental death benefits. *Id.* There has been no dispute that the policy constitutes an insured employee welfare benefit plan governed by and subject to ERISA. *Id.* 2a, 12a, 14a. Likewise, there is no dispute that Galaway named Petitioner as the beneficiary of the policy. *Id.* 1a, 2a, 12a.

Galaway and Petitioner were divorced on June 20, 2002. *Id.* 2a, 12a. As part of the divorce proceedings, they

voluntarily entered into an Agreed Final Decree of Divorce, signed by both Galaway and Petitioner and their respective attorneys, that awarded Galaway all "right, title, interest, and claim in and to" his life insurance policies. *Id.*

On November 8, 2002, Galaway was killed in an airplane accident. *Id.* He died intestate and had not changed the named beneficiary on the ERISA-governed life insurance policy prior to his death. *Id.*

Petitioner sought payment of the benefits under the policy, as the sole named beneficiary. *Id.* Eddie Lee Galaway ("Respondent"), the Administrator of the Estate of Bradford Wayne Galaway ("Estate"), also sought payment to the Estate of the benefits under the policy, claiming that the divorce decree terminated Petitioner's rights to those proceeds notwithstanding the continuing designation in the plan documents. *Id.* 1a, 2a, 12a.

On May 30, 2003, Guardian filed an interpleader action in the United States District Court for the Northern District of Texas, pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1), in which it asked the court to identify the proper beneficiary of the insurance proceeds and determine the competing claims to the proceeds of the ERISA-governed life insurance policy. *Id.* 1a, 2a-3a, 12a. By the order of the District Court and with the consent of all parties, the interpleader was resolved and determined by United States Magistrate Judge Irma C. Ramirez. *Id.* 1a. Guardian was discharged from all liability with respect to the benefits on September 16, 2003. *Id.* 12a-13a.

Petitioner and Respondent filed motions for summary judgment on the issue of entitlement to the benefits, acknowledging that there were no material disputed facts and stating that the only issue to be resolved was the law to be applied to the case to determine whether Petitioner effected a valid waiver of her right to the ERISA plan benefits. *Id.* 13a, 14a. In its motion, Respondent argued that ERISA does not prevent a beneficiary from waiving rights to insurance

benefits and that Petitioner waived her rights to the policy benefits in the divorce decree. *Id.* 14a. Petitioner argued that ERISA does not provide for waiver of beneficiary rights and dictates that benefits be paid in accordance with plan documents. *Id.* 14a. Petitioner further argued that the Supreme Court's decision in *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001), overruled the Fifth Circuit's prior decisions that called for courts to apply a federal common law rule of waiver in these circumstances. *Id.* 15a.

The magistrate judge noted that, "[a]lthough the Supreme Court did not determine whether conflict preemption was applicable upon a determination of ERISA preemption, its decision of *Egelhoff* does cast doubt on whether the Fifth Circuit's federal common law approach, as set out in [Fifth Circuit decisions pre-dating *Egelhoff*] should continue to be applied in such cases." *Id.* 15a. However, because "the Supreme Court declined to determine whether the principles of conflict preemption apply and did not overrule the federal common law approach set forth by the Fifth Circuit," the magistrate judge regarded herself as bound by the federal common law rule established by the Fifth Circuit. *Id.* 15a-16a.

On appeal, the Fifth Circuit rejected Petitioner's arguments that *Egelhoff* undermines the Fifth Circuit's "longstanding practice of looking to federal common law to determine if the named beneficiary of an ERISA-governed benefits plan has effected a valid waiver of her rights" and affirmed the judgment of the magistrate judge. *Id.* 3a-4a, 10a.

The Fifth Circuit panel noted:

> Outside of this circuit, the majority of courts that have considered whether federal common law governs disputes between an ex-spouse who is an ERISA plan's designated beneficiary and other claimants to the plan's proceeds have reached the same conclusion that this court has reached. Specifically, most courts have: (1) concluded

> that ERISA does not preempt a waiver by a named beneficiary of her interest in the plan's proceeds; and (2) relied on federal common law principles in order to determine if the named beneficiary effected a valid waiver of her rights under the plan. Only the Sixth Circuit has clearly gone the other way, finding that the text of ERISA forecloses employing federal common law to determine a plan's beneficiary. Hence, the majority of circuits that have considered the issue presently before this court have concluded, as we have done in the past, that it is appropriate to apply federal common law to determine if the named beneficiary of an ERISA plan has waived her rights.

App. 5a (citations omitted).

The Fifth Circuit then reviewed Petitioner's arguments based on *Egelhoff* and, after reviewing this Court's holdings and reasoning in that decision, concluded that "*Egelhoff* does not undermine this court's practice of applying federal common law to determine if an ERISA plan's named beneficiary has effected a valid waiver of her rights under the plan." *Id.* 6a-7a. The Court of Appeals enumerated four reasons for rejecting Petitioner's arguments. *Id.* 7a-9a.

First, the Fifth Circuit noted that "the holding of *Egelhoff* is inapplicable to the present case because *Egelhoff* does not address the application of federal common law to ERISA plans" but rather only "whether ERISA preempts a state statute that automatically revokes the designation of a spouse as the beneficiary of a life insurance policy upon divorce." *Id.* 7a.

Second, the Fifth Circuit concluded that "the goal of uniformity that the Supreme Court discusses in *Egelhoff* is not undermined when courts rely on the federal common law of waiver to determine if a beneficiary has waived her rights under an ERISA plan." *Id.* 8a. The Fifth Circuit relied upon its observation that "*Egelhoff* only discusses the problems created when plan administrators must look to state law in

order to identify a plan's beneficiary" and "never holds that uniformity would be undermined if courts relied on federal common law." *Id.* The Court of Appeals noted that "plan administrators must at times look to federal common law (*e.g.*, to determine how a certain provision of ERISA has been interpreted in a particular circuit)" and concluded that, as such, "reliance on federal common law cannot alone undermine the uniformity that the Supreme Court discusses in *Egelhoff*." *Id.* The Fifth Circuit in fact went further and opined that "applying federal common law to determine if an ERISA plan's beneficiary waived her rights can be seen as promoting, rather than undermining, national uniformity," citing the divided Seventh Circuit's observation that "federal courts are charged with creating federal common law rules to govern ERISA, and the creation of such federal rules will provide the needed uniformity." *Id.* (quoting *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 281-82 (7th Cir. 1990) (en banc)).

Third, the Fifth Circuit observed that "the Supreme Court in *Egelhoff* strongly suggested that courts can at times rely on common law principles when determining the identity of the beneficiary of an ERISA plan." *Id.* The panel pointed to the *Egelhoff* Court's discussion of state "slayer" statutes, in which the Court noted that "the principle underlying the statutes—which have been adopted by nearly every State—is well established in the law and has a long historical pedigree predating ERISA" and stated that, "because the statutes are more or less uniform nationwide, their interference with the aims of ERISA is at least debatable." *Id.* 8a-9a (quoting *Egelhoff*, 532 U.S. at 152). The Fifth Circuit further observed that "the Supreme Court has, at times, noted that it might be proper for lower courts to look to common-law principles when interpreting provisions of ERISA." *Id.* 9a.

Fourth, the Fifth Circuit observed that "several post-*Egelhoff* decisions from other circuits reinforce our conclusion that *Egelhoff* does not undermine this court's application of federal common law to determine if an ERISA

plan's named beneficiary has effected a valid waiver." *Id.* 9a-10a.

The Fifth Circuit entered judgment affirming the district court's judgment on December 22, 2004, and this petition followed.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT, IN CONFLICT WITH OTHER CIRCUITS, WRONGLY APPLIED FEDERAL COMMON LAW RATHER THAN THE ERISA PLAN DOCUMENTS, PURSUANT TO THE STATUTE, TO DETERMINE PETITIONER'S BENEFICIARY STATUS

This case presents the simple but fundamental and important question of what source of authority should determine the proper beneficiary of an ERISA employee benefit plan when the plan documents or instruments name a plan participant's ex-spouse as the beneficiary. Courts faced with this issue have sharply divided between a strict application of ERISA's plain textual commands to limit distributions to persons named in the plan documents and reliance on a waiver rule created under federal common law, that in turn borrows from preempted state law.

ERISA clearly dictates that plan administrators must administer employee benefit plans "in accordance with the documents and instruments governing the plan." 29 U.S.C. § 1104(a)(1)(D). The plans "shall be established and maintained pursuant to a written instrument" and "shall ... specify the basis on which payments are made to and from the plan." 29 U.S.C. § 1102(a)(1), 1102(b)(4). ERISA plan administrators must make payments to a "beneficiary" who is "designated by a participant, or by the terms of an employee benefit plan." 29 U.S.C. § 1002(8); *Egelhoff*, 532 U.S. at 147.

In the face of this statutory scheme, the law is well-settled that state law cannot govern the proper beneficiary to whom to distribute a plan's proceeds, because ERISA preempts

state laws "that directly conflict[] with ERISA's requirements that plans be administered, and benefits be paid, in accordance with the plan documents." 29 U.S.C. § 1144(a); *Egelhoff*, 532 U.S. at 147-50; *accord Manning v. Hayes*, 212 F.3d 866, 870 (5th Cir. 2000) (collecting cases). Lower courts are divided, however, on whether the text of ERISA itself provides the law to determine the proper beneficiary of an ERISA-governed plan or whether, finding no answer in the statutory language, a rule must be developed as a matter of federal common law.

The Sixth Circuit and at least one district court decision in the Third Circuit clearly hold—as dissenters in still other circuits have urged—that a clear beneficiary designation in plan documents or instruments cannot be disturbed by a waiver in external documents. *Central States, Southeast & Southwest Areas Pension Fund v. Howell*, 227 F.3d 672, 676-77 (6th Cir. 2000); *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 129-30 (6th Cir. 1996); *McMillan v. Parrott*, 913 F.2d 310, 311-12 (6th Cir. 1990); *Estate of Zienowicz v. Metropolitan Life Ins. Co.*, 205 F. Supp. 2d 339, 343-44 (D.N.J. 2002). These courts conclude, correctly, that 29 U.S.C. § 1104(a)(1)(D) provides the law to determine the proper beneficiary of an ERISA-governed plan by "establish[ing] a clear mandate that plan administrators follow plan documents to determine the designated beneficiary." *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996); *see also Central States, Southeast & Southwest Areas Pension Fund v. Howell*, 227 F.3d 672, 676 (6th Cir. 2000) (describing the Sixth Circuit's rule in terms of conflict preemption, stating that "[w]e have explicitly and repeatedly held that state court divorce decrees purporting to affect the benefits payable from an ERISA plan are preempted"). Thus, "a divorce settlement cannot waive [ERISA] plan benefits when a clear designation has been made on the plan documents," which documents therefore control the resolution of this issue. *Estate of Zienowicz v.*

Metropolitan Life Ins. Co., 205 F. Supp. 2d 339, 343 (D.N.J. 2002).

This minority view, which has also been espoused in forceful dissents by Judge Wilkinson in the Fourth Circuit and Judges Easterbrook and Ripple in the Seventh Circuit, holds that, where state law is preempted by ERISA, the text of 29 U.S.C. § 1104(a) "is clear on requiring that plan administrators follow the plan documents in making beneficiary designations." *Zienowicz*, 205 F. Supp. 2d at 344; *accord Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 82-84 (4th Cir. 1996) (Wilkinson, J., dissenting); *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 282-84 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting); *id.* at 284-85 (Ripple, J., dissenting). Thus, federal common law cannot be invoked to determine if a named beneficiary has waived her rights to plan benefits. The Second Circuit may join in this view.[1]

This view accords generally with this Court's own recent observation that, because of "ERISA's requirements that plans be administered, and benefits be paid, in accordance with plan documents," a state statute is preempted by ERISA where its operation dictates that "[p]lan administrators

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[1] Several courts have cited the Second Circuit's decision in *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993), as treating plan documents as controlling under 29 U.S.C. § 1104(a)(1)(D).

> In this case, the Policy includes a clear provision calling for the filing of written designations to name or change a beneficiary. It would be counterproductive to compel the Policy administrator to look beyond those designations into varying state laws regarding wills, trusts and estates, or domestic relations to determine the proper beneficiaries of Policy distributions.

Id. at 16 (cited in, *e.g.*, *Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 81 (4th Cir. 1996); *Metropolitan Life Ins. Co. v. Flinkstrom*, 303 F. Supp. 2d 34, 40 (D. Mass. 2004)). *But see Silber v. Silber*, 786 N.E.2d 1263, 1268 n.2 (N.Y. 2003) (stating that *Krisha* does not conflict with a federal common law waiver rule adopted by the majority of federal courts).

cannot make payments simply by identifying the beneficiary specified by the plan documents." *Egelhoff*, 532 U.S. at 148, 150; *see also id.* at 151 n.4 (noting that "we are called upon merely to interpret ERISA. And under the text of ERISA, the fiduciary 'shall' administer the plan 'in accordance with the documents and instruments governing the plan,' 29 U.S.C. § 1104(a)(1)(D). The Washington statute conflicts with this command because under this statute, the only way the fiduciary can administer the plan according to its terms is to change the very terms he is supposed to follow.").

In *Egelhoff*, in the context of ERISA preemption of a state statute that purported to require ERISA plan administrators to pay benefits to beneficiaries chosen by state law, the Court also rejected an approach by which a court can

> escape the conflict between the plan documents (which require making payments to the named beneficiary) and the statute (which requires making payments to someone else) by calling the statute an "invalidation" of the designation of the named beneficiary, and by observing that the plan documents are silent on whether "invalidation" is to occur upon divorce.

Id. at 148 n.1. The Court observed that:

> [r]eading a clear statement as an ambiguous metastatement enables one to avoid all kinds of conflicts between seemingly contradictory texts. Suppose, for example, that the statute required that all pension benefits be paid to the Governor of Washington. That seems inconsistent with the plan documents (and with ERISA), but the inconsistency disappears if one calls the statute an "invalidation" of the principal and alternate beneficiary designations. After all, neither the plan nor ERISA actually *says* that beneficiaries *cannot* be invalidated in favor of the Governor. This approach exploits the logical inability of any text to contain a complete set of instructions for its own interpretation.

Id.

Indeed, federal common law exists where "the Court is compelled to consider federal questions 'which cannot be answered from federal statutes alone.'" *Milwaukee v. Illinois*, 451 U.S. 304, 314 (1981) (quoting *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 469 (1942) (Jackson, J., concurring)). Thus, federal common law is "resorted to '[i]n the absence of an applicable Act of Congress.'" *Id.* (quoting *Clearfield Trust Co. v. United States*, 318 US. 647 (1963)).

Similarly, Judge Easterbrook, in his dissent from the en banc Seventh Circuit, rejected any reliance on ERISA's alleged silence with respect to when a named beneficiary effects a valid waiver: "Although ERISA does not say 'pay only the person whose name is on file,' it does say that every plan must act 'in accordance with the documents and instruments' governing it, 29 U.S.C. § 1104(a)(1)(D), and this plan has a written-designation rule." *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 283 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting). The command that plan documents govern a plan's administration does not suggest that it is open to exception simply because ERISA's text necessarily does not "contain a complete set of instructions for its own interpretation." *Egelhoff*, 532 U.S. at 148 n.1. In short, the fact that ERISA does not expressly discuss and reject every possible exception to its clear command does not mean that the statute is pregnant with ambiguity or that it contains a gap to be filled by federal common law.

The Fifth Circuit and a majority of other circuits hold exactly to the contrary: that "ERISA does not expressly address the circumstances, if any, in which a non-beneficiary may avoid the payment of life insurance benefits to the named beneficiary" and thus "the issue is governed by federal common law." *Manning v. Hayes*, 212 F.3d 866, 871 (5th Cir. 2000). The Fifth Circuit formulated its common law rule by adopting, with modifications, the Texas state statutory rule creating a presumption of waiver absent redesignation. *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321,

1326 (5th Cir. 1994); *accord Clift v. Clift*, 210 F.3d 268, 271-72 (5th Cir. 2000).

The Fifth Circuit has also disclaimed reliance upon 29 U.S.C. § 1104 to determine the proper beneficiary of ERISA-governed plans, holding "[t]hat section does not either expressly or implicitly purport to establish any methodology for determining the beneficiary of an ERISA plan or for resolving competing claims to insurance proceeds." *Manning*, 212 F.3d at 872. The Fifth Circuit has further rejected the argument that ERISA precludes, by means of conflict preemption, any reliance on federal common law when determining whether a named beneficiary is the proper beneficiary of plan benefits. *Id.*

As noted in the Fifth Circuit's own decision in this case, App. 5a, the Fourth, Seventh, and Eighth Circuits, as well as several district courts and state courts, have likewise rejected the minority rule and adopted similar federal common law approaches—most often adopted from otherwise-preempted state law—based on a divorce settlement or decree that is held at common law to trump an express designation in plan documents, *see Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 81-82 (4th Cir. 1996); *Lyman Lumber Co. v. Hill*, 877 F.2d 692, 693-94 (8th Cir. 1989); *Melton v. Melton*, 324 F.3d 941, 945-46 (7th Cir. 2003); *Metropolitan Life Ins. Co. v. Flinkstrom*, 303 F. Supp. 2d 34, 39-43 (D. Mass. 2004); *John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 413, 419-20 (D.N.J. 1999); *MacInnes v. MacInnes*, 677 N.W.2d 889, 892-92 (Mich. Ct. App. 2004); *Silber v. Silber*, 786 N.E.2d 1263, 1267-69 (N.Y. 2003); *Keen v. Weaver*, 121 S.W.3d 721, 725-26 (Tex. 2003). These decisions generally follow a highly-divided en banc decision by the Seventh Circuit in 1990, in which the majority decision concluded that "ERISA is silent on what constitutes a proper waiver in this situation" and that, "[w]hen ERISA is silent on an issue, a federal court must fashion federal common law rules to govern ERISA suits." *Fox Valley & Vicinity Constr.*

Workers Pension Fund v. Brown, 897 F.2d 275, 280, 281 (7th Cir. 1990) (en banc).

II. THE ISSUE IN CONFLICT IS STARKLY PRESENTED BY THE PRESENT CASE

This case is a particularly well-suited vehicle to address the circuit split. As the Fifth Circuit's decision noted, there is no dispute in this case that the plan is governed by ERISA, that the case should be disposed of on summary judgment in the absence of any disputed facts, and that the only issue before the court is the purely legal question of whether courts can rely on federal common law to determine if a named beneficiary of an ERISA plan waived her rights. App. 2a, 3a-4a.

Furthermore, this legal issue was wholly dispositive of the case in both the district court and the Fifth Circuit. App. 3a-10a, 13a-17a. The sole question presented is thus posed in particularly pristine terms by this case.

III. THE ISSUE IS RECURRING AND OF SUBSTANTIAL IMPORTANCE

The long-standing circuit split and the important national policy interests that the split and the majority rule implicate commend this case to the Court's review.

The circuits have been divided for almost fifteen years on the issue of what law determines the proper beneficiary of an ERISA plan. *Compare, e.g., Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 280 (7th Cir. 1990) (en banc), *with McMillan v. Parrott*, 913 F.2d 310, 311-12 (6th Cir. 1990). The split is deep and will not resolve itself, even after *Egelhoff*, as the recent divide among the district courts in the District of New Jersey attests. *Compare John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 413, 419-20 (D.N.J. 1999), *with Estate of Zienowicz v. Metropolitan Life Ins. Co.*, 205 F. Supp. 2d 339, 343-44 (D.N.J. 2002). There is no value to be gained by the Court

awaiting the passage of time to permit this issue to work its way further through the lower courts.

To the contrary, the split among the federal courts and the majority rule that currently prevails undermines important policy interests that run deeply through the ERISA statutory scheme. As the Court recently observed, a principal goal of ERISA is "nationally uniform plan administration" that enables "employers 'to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.'" *Egelhoff*, 532 U.S. at 148 (quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987)). Both the lack of uniformity among the federal courts and the majority rule's adoption of federal common law dictated by each circuit's own rule, adopted from the law of the states within each circuit, undermines this goal of uniformity and makes plan administration more difficult and more costly, particularly for multi-state employers. *See* Norwood, *supra*, 33 GONZ. L. REV. at 81-82.

A. The Minority Rule Creates Uniformity and Certainty and Reduces Litigation and Risks of Double Liability

In contrast, the Sixth Circuit's rule that plan documents control the proper beneficiary "fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application." *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990) (citing H. REP. NO. 533, 93d Congr., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 4639, 4650). As Judge Wilkinson observed in his dissent from a Fourth Circuit decision, "[h]eeding 'the federal rule favoring beneficiary designations filed with a plan administrator' promotes the 'strong interest in uniform, uncomplicated administration of ERISA plans.'" *Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 82 (4th Cir. 1996) (Wilkinson, J., dissenting) (quoting *Krishna v. Colgate*

Palmolive Co., 7 F.3d 11, 16 (2d Cir. 1993)); *see also* Norwood, *supra*, 33 GONZ. L. REV. at 77.

"If the designation on file controls, administrators and courts need look no further than the plan documents to determine the beneficiary, thus avoiding expensive litigation as has occurred in" this interpleader action and many others before it under the federal common law majority rule. *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990). Judge Easterbrook of the Seventh Circuit thus observed that "[r]ules requiring payment to named beneficiaries yield simple administration, avoid double liability, and ensure that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 283 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting); *accord* Norwood, *supra*, 33 GONZ. L. REV. at 80 (discussing the dangers of double liability for a plan administrator who may inadvertently pay the incorrect beneficiary according to a federal common law determination and thereby incur liability for the cost of paying the correct beneficiary and of instituting efforts and possibly legal proceedings to recover payment from the incorrect beneficiary); *cf. Egelhoff*, 532 U.S. at 149-50 (discussing the danger of double liability and the ensuing inefficient incentives imposed upon plan administrators by a state statute purporting to govern the proper beneficiary of an ERISA-governed plan).

Judge Wilkinson of the Fourth Circuit likewise correctly noted in dissent that:

> "[r]eliance on the face of written plan documents" also furthers another of ERISA's central goals, that of "enabling beneficiaries[and employees] to learn their rights and obligations at any time." *Curtiss-Wright Corp. v. Schoonejongen*, 131 L. Ed. 2d 94, 115 S. Ct. 1223, 1230 (1995). Strict adherence to § 1104(a)(1)(D) ensures that all interested parties, including participants, beneficiaries, and plan administrators, can identify their

> rights and duties with certainty, a primary objective of ERISA. *Parrott*, 913 F.2d at 312.

Estate of Altobelli v. IBM Corp., 77 F.3d 78, 82 (4th Cir. 1996) (Wilkinson, J., dissenting); *accord Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 284 (7th Cir. 1990) (en banc) (Ripple, J., dissenting) ("This statutory command embodies a strong federal policy that all parties—participant, trustee, and beneficiary—be able to ascertain their rights and liabilities with certainty.").

B. The Majority Rule Leads to Uncertainty and Litigation Risk in the Circuits Applying It

The absence of a resolution of the circuit split by this Court and the continued observance by many courts of the majority rule lead not to certainty and simplicity of administration, but to multiplying litigation, particularly for national insurance companies that operate as plan administrators for participants throughout the country or multi-state employers administering their own plans. For example, Metropolitan Life Insurance Company, by virtue of published decisions in its own interpleader actions, is obliged to follow very different rules in Michigan and Texas and is forced to litigate, at risk of double liability, in every circuit that has not yet weighed in on the split. *Compare Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 129-30 (6th Cir. 1996), *with Metropolitan Life Ins. Co. v. Palmer*, 238 F. Supp. 2d 821, 825-26 (E.D. Tex. 2002).

It is, however, the administrators of small plans that are perhaps least able to sustain the costly investigation and litigation that inevitably ensues under the present split among the courts. *See* Norwood, *supra*, 33 GONZ. L. REV. at 78-80.

> Forcing plan trustees to examine a multitude of external documents that might purport to affect the dispensation of benefits frustrates the statutory goals of efficiency in administration and certainty in expectations. The costs

> associated with these inefficiencies might well "lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them."

Estate of Altobelli v. IBM Corp., 77 F.3d 78, 82-83 (4th Cir. 1996) (Wilkinson, J., dissenting) (citation omitted; quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987)).

The majority rule is not saved by a supposed uniformity among the federal common law rules adopted by various federal courts. This uniformity apparently is supposed to reside in the procedure of looking to federal common law for a waiver rule, although the actual rules created are anything but clear and uniform. *See* App. 7a. Indeed, under any federal common law rule,

> [i]nterpreting [divorce] decrees will cause problems for plan administrators. For instance, waiver provisions are often sweeping in their terms, leaving their precise effect on plan benefits unclear. Even when facing waiver terms that reference the affected plans, plan administrators will have to assess whether the waiver is executed with sufficient specificity to trump the beneficiary designation in the plan documents. Courts have reached contradictory conclusions in such situations. *Compare Lyman Lumber Co. v. Hill*, 877 F.2d 692[, 693] (8th Cir. 1989) (term stating that husband "shall have as his own, free of any interest of [his wife], his interest in the profit-sharing plan of his employer" held not to waive wife's beneficiary interest in plan), with *Fox Valley*[*& Vicinity Constr. Workers Pension Fund v. Brown*], 897 F.2d [275, 277 (7th Cir. 1990) (en banc)] (term stating that the parties "waive any interest or claim in and to any retirement, pension, profit-sharing and/or annuity plans resulting from the employment of the other party" held to waive wife's beneficiary interest in pension plan). Forcing plan trustees to make such determinations will

> only complicate plan administration and will leave all parties unsure of their rights and obligations.

Estate of Altobelli v. IBM Corp., 77 F.3d 78, 83 (4th Cir. 1996) (Wilkinson, J., dissenting) (citation omitted). Thus, under the majority rule, "a plan administrator, who may or may not be an attorney, is responsible for finding and interpreting the state and federal law addressing the issue of waivers incorporated into a divorce decree, and then applying that law to the particular waiver at issue to determine the proper recipient of the plan benefits." Norwood, *supra*, 33 GONZ. L. REV. at 82; *cf. Egelhoff*, 532 U.S. at 148-49 (noting that allowing state statutes to govern the proper beneficiaries under ERISA-governed plans would require plan administrators to "familiarize themselves with state statutes so that they can determine whether the named beneficiary's status has been 'revoked' by operation of law," in which situation "administrators might find that plan payments are subject to conflicting legal obligations" due to choice-of-law problems).

Further, as noted above, plan administrators even face uncertainty and lack of uniformity among jurisdictions adopting federal common law rules, in direct contravention of the well-settled understanding that "federal common law should be consistent across the circuits." *Singer v. Black & Decker Corp.*, 964 F.2d 1449, 1453 (4th Cir. 1992). This likewise leads to systemic inefficiencies and inconsistency in ERISA plan administration. *See* Norwood, *supra*, 33 GONZ. L. REV. at 95; *cf. Egelhoff*, 532 U.S. at 148 (noting, in the context of ERISA preemption of a state statute, that "[u]niformity is impossible, however, if plans are subject to different legal obligations in different States").

To advance all of the important policy goals of ERISA, "[t]he better rule is the one dictated by the statute—to honor the designations on file with the plan documents." *Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 83 (4th Cir. 1996) (Wilkinson, J., dissenting). This rule is easy to apply,

predictable across cases and jurisdiction, and lends itself to uniform, consistent application across the country.

In contrast, whatever equitable arguments can be advanced for giving effect to an ex-spouse's possible relinquishment of plan benefits in a divorce settlement or to any other conceivable competing claim at common law, it is critical to note that "[w]hat seem like small equitable steps in a particular case may lead to large administrative headaches in the aggregate." *Id.* As Judge Easterbrook observed in dissenting from the Seventh Circuit's 1990 en banc decision:

> ERISA is full of unyielding rules, designed to simplify administration. Rules have their flaws; loopholes and overbreadth, both producing unpalatable outcomes in the event of unanticipated circumstances, are among them. But whether to have rules (flaws and all) or more flexible standards (with high costs of administration and erratic application) is a decision already made by legislation. Congress and pension plans elected to use rules rather than standards; patterns of avoidance mean that we transmute the approach Congress chose into the one it rejected.

Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown, 897 F.2d 275, 283-84 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting).

In any event, the worst of all possible worlds for ERISA's goals of predictability, uniformity, certainty, and simplicity of plan administration is one in which the current circuit split requires plan administrators to determine the proper beneficiary in a divorce context based on the governing plan documents and instruments in some jurisdictions and based on varying formulations of federal common law rules in others.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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